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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 GERALD SPENCE,

10 Plaintiff, No. CIV S-05-0690 GEB KJM P

11 vs.

12 DIRECTOR OF CORRECTIONS,
et al.,

13 Defendants. ORDER

14 _____ /
15 Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42
16 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915.
17 This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

18 Plaintiff has submitted a declaration that makes the showing required by 28
19 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

20 Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. 28
21 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently
22 without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C.
23 § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding
24 month's income credited to plaintiff's prison trust account. These payments shall be collected
25 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
26

1 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The complaint states a cognizable claim for relief under 42 U.S.C. § 1983 and 28
4 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a reasonable
5 opportunity to prevail on the merits of this action.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 8 2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

9 The fee shall be collected and paid in accordance with this court's order to the Director of the
10 California Department of Corrections filed concurrently herewith.

11 3. Service is appropriate for the following defendants: Peddicord, Fleming,
12 Urquiza, Madrigal, Lynn, Doyle, Hamilton insofar as the complaint alleges a First Amendment
13 claim of retaliation against them; Unter Rhiner in so far as the complaint alleges First and Eighth
14 Amendment claims; and Salenger and Fleischman insofar as the complaint alleges an Eighth
15 Amendment claim against them.

16 4. The Clerk of the Court shall send plaintiff ten USM-285 forms, one summons,
17 an instruction sheet and a copy of the complaint filed April 11, 2005.

18 5. Within thirty days from the date of this order, plaintiff shall complete the
19 attached Notice of Submission of Documents and submit the following documents to the court:

- 20 a. The completed Notice of Submission of Documents;
- 21 b. One completed summons;
- 22 c. One completed USM-285 form for each defendant listed in number 3
23 above; and
- 24 d. Eleven copies of the endorsed complaint filed April 11, 2005.

25 6. Plaintiff need not attempt service on defendants and need not request waiver of
26 service. Upon receipt of the above-described documents, the court will direct the United States

1 Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without
2 payment of costs.

3 DATED: December 5, 2005.

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6 UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,

Plaintiff,

No. CIV S 05-0690 GEB KJM P

vs.

DIRECTOR OF CORRECTIONS,
et al.,

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____

Complaint/Amended Complaint

DATED:

Plaintiff